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**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

**UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513**

Cataldo

Cancellation No. 29,135

TravelQuest Ltd.

v.

Davis Companies, Inc.

Before Seeherman, Quinn and Walters,  
Administrative Trademark Judges.

By the Board:

Travelquest Ltd. ("petitioner") seeks to cancel the registration of Davis Companies, Inc. ("respondent") for the mark TRAVELQUEST for "travel agency services, namely, making reservations and bookings for transportation."<sup>1</sup> A brief review of the relevant history of this proceeding is believed helpful at this time.

On September 22, 2000, respondent filed a motion to compel responses to certain of its discovery requests. On September 26, 2000, petitioner filed a motion for summary judgment. On October 16, 2000, respondent served

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<sup>1</sup> Registration No. 2,247,978 was issued on May 25, 1999, for an application filed on May 30, 1996 and reciting September 3, 1996

a response in opposition thereto and a cross motion for summary

judgment. In an order issued on May 4, 2001, the Board noted that petitioner's motion for summary judgment alleged, in part, an unpleaded issue; namely, prior use of "Travelquest" and "Travelquest Ltd" as a trade name. Accordingly, the Board deferred consideration of the parties' cross motions for summary judgment. In addition, with regard to the unpleaded matter, the Board allowed petitioner thirty days in which to amend its petition for cancellation to assert, if appropriate, prior use of "Travelquest" or "Travelquest Ltd" as a trade name, and likelihood of confusion therewith. The Board further allowed respondent thirty days thereafter in which to serve its answer to the amended petition for cancellation, and serve a supplemental response in opposition to petitioner's motion for summary judgment directed toward petitioner's claim of prior use of "Travelquest" or "Travelquest, Ltd" as a trade name, and likelihood of confusion as a result of such use.

On May 22, 2001, petitioner served an amended petition for cancellation. As grounds for the amended petition to cancel, petitioner asserts that since at

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as the date of first use of the mark in commerce in connection

least May 1981, petitioner has been using the mark TRAVELQUEST in connection with the provision of travel agency services, namely, making reservations and bookings for transportation; that its use of TRAVELQUEST has been valid and continuous since the date of first use, and has not been abandoned; that since at least May 1981, petitioner has been using "Travelquest" as a trade name and business name in connection with the provision of the above services; that since at least July 27, 1981, petitioner has been using "Travelquest Ltd" as a trade name and business name in connection with the above services; that petitioner's trade name and business name use asserted above is in a form and format analogous to trademark use; that such use has been valid, continuous, open and notorious and has not been abandoned; that petitioner has built up extensive good will and consumer recognition of its mark and trade names due to substantial time and effort spent on advertising and promotion thereof; and that confusion, mistake, or deception is likely among consumers as a result of the similarity between petitioner's mark and trade name and respondent's mark, and services identified thereby.

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with the services.

Respondent, in its amended answer filed on June 19, 2001, denies the essential allegations of the amended petition to cancel.

In view of the foregoing, the Board will now consider the parties' cross motions for summary judgment. Both

motions are fully briefed.<sup>2</sup>

In support of its motion for summary judgment, petitioner argues that since prior to the filing date of respondent's intent to use application that matured into the registration at issue herein, petitioner has provided travel services under the mark TRAVELQUEST and the trade names "Travelquest" and "Travelquest Ltd"; that respondent's mark TRAVELQUEST is virtually identical to petitioner's mark and trade names; that respondent's mark is used in connection with services that are identical to those identified by petitioner's mark and trade names; and that, as a result, petitioner is entitled to summary judgment in this matter.

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<sup>2</sup> Petitioner has filed a reply brief with its response in opposition to respondent's cross motion for summary judgment which the Board has entertained because it clarifies the issues under consideration herein. Consideration of reply briefs is discretionary on the part of the Board. See Trademark Rule 2.127(a).

In support of its motion, petitioner has submitted the declaration, with exhibits, of Camille K. D. Miller, its President. Ms. Miller has averred that petitioner was incorporated on July 27, 1981; that since May 1981, petitioner has been engaged in the business of providing travel services under the mark TRAVELQUEST; that petitioner provides interstate and international travel arrangements for the band "The Grateful Dead"; that petitioner prints tour books for each travel tour it arranges for the band; that from 1981 until the present, petitioner has advertised its travel services using the mark TRAVELQUEST in telephone directories; that from 1981 until the present, petitioner has utilized travel folders to enclose its clients' travel documentation, and has sent invoices to its clients for travel services.

As part of its declaration, petitioner has submitted a copy of its Articles of Incorporation filed July 27, 1981; copies of excerpts from its service mark application Serial No. 75/635,652; copies of tour books displaying the trade name "Travelquest, Ltd." issued to the band "The Grateful Dead" from 1985 until 1995; a copy of a printed advertisement from the "Travel" section of the 1995 Marin County telephone directory displaying

"TRAVELQUEST LTD" in connection with travel services; a copy of a travel folder displaying the trade name "Travelquest, Ltd"; and a copy of a June 7, 1995 invoice submitted to one of petitioner's travel service clients displaying the trade name "Travelquest, Ltd".

In its response and cross motion for summary judgment, respondent essentially maintains that there are material facts in dispute with regard to the following allegations: that petitioner has been providing travel services under the TRAVELQUEST mark; that petitioner has rendered its services in interstate commerce prior to filing its above referenced trademark application; that petitioner has made travel arrangements for anyone other than the band "The Grateful Dead"; that petitioner's use of its name on tour books has been continuous; that petitioner has advertised its services in various telephone directories or other media outlets since 1981; and that petitioner's travel folders or invoices were sent to any clients other than members of the band "The Grateful Dead". Respondent asserts in addition that certain facts relied upon by petitioner in its motion for summary judgment are in fact conclusory statements; that in addition petitioner has made an insufficient showing of use analogous to trademark use to create public

identification of the term "Travelquest" with petitioner's services; that likewise petitioner has failed to demonstrate sufficient use of its trade name or mark in such a manner that would establish a public identification thereof with petitioner's travel services; that petitioner has failed to produce any evidence to support its assertions beyond that submitted with its motion for summary judgment; and that, as a result, summary judgment should be entered in favor of respondent.

In reply, petitioner essentially argues that it has submitted sufficient evidence to establish open and notorious use of its trade name and mark in connection with travel services to support its claim of priority and likelihood of confusion. Petitioner asserts in addition that all facts relied upon by petitioner in its motion for summary judgment are based upon the personal knowledge of petitioner's President.

With its reply petitioner has submitted the supplemental declaration, with exhibits, of its President, Camille K. D. Miller, in which Ms. Miller avers that from 1981 until the present, petitioner has run advertisements in the travel section of the Marin County yellow pages that always feature the mark

TRAVELQUEST; that according to a December 1999 invoice, petitioner had generated 52,763 invoices since 1983 for travel services; and that petitioner has received mail from third parties addressed to "Travelquest".<sup>3</sup>

As part of its supplemental declaration, petitioner submitted a December 1999 invoice generated in connection with petitioner's travel services; and copies of four pieces of correspondence addressed to petitioner as "Travelquest".

As has often been stated, summary judgment is an appropriate method of disposing of cases in which there are no genuine issues of material fact in dispute, thus leaving the case to be resolved as a matter of law. See Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of demonstrating the absence of any genuine issue of material fact. See *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), and *Sweats Fashions Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793 (Fed. Cir. 1987). A factual dispute is genuine, if, on the evidence of record, a reasonable finder of fact could

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<sup>3</sup> As previously noted in the Board's May 4 2001 order, objections raised by petitioner in its reply brief to respondent's cross motion for summary judgment on the ground of



resolve the matter in favor of the non-moving party. See *Opryland USA Inc. v. Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992), and *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992). The evidence must be viewed in a light most favorable to the non-movant, and all justifiable inferences are to be drawn in the non-movant's favor. See *Lloyd's Food Products Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993), and *Opryland USA*, *supra*.

After a careful review of the record in this case, we find that there are no genuine issues of material fact and that petitioner is entitled to judgment as a matter of law.<sup>4</sup>

Turning first to the question of priority, it is well settled that in the absence of any evidence of earlier use, the earliest date upon which respondent may rely is the filing date of its application. See Trademark Act Section 7(c). See also *Larami Corp. v. Talk to Me Programs, Inc.*, 36 USPQ2d 1840 (TTAB 1995).

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timeliness are not well taken, and will be given no consideration herein.

<sup>4</sup> As a preliminary matter, we note that there is no genuine issue as to petitioner's standing, inasmuch as there is of record evidence of petitioner's use of the mark TRAVELQUEST and

As noted above, the application that matured into the registration at issue herein was accorded a filing date of May 30, 1996. Inasmuch as respondent has neither alleged nor introduced any evidence to support a finding that it has made earlier use of its mark, we find that May 30, 1996 is the earliest date upon which respondent is entitled to rely for purposes of priority.

Petitioner has submitted evidence that it first used "Travelquest Ltd" as a trade name as early as 1981, and that between 1985 and 1995 it used "Travelquest Ltd" on tour books in connection with travel services provided to the band "The Grateful Dead." (Exhibit E.) In addition, petitioner submitted evidence by declaration that it advertised its travel services using the TRAVELQUEST mark in telephone directories during that same period.

(Declaration of Camille K. D. Miller.) Petitioner has submitted such a telephone directory advertisement displaying at least the trade name "Travelquest Ltd" in connection with travel services. (Exhibit F.) Moreover, petitioner has submitted evidence by declaration that between 1983 and 1999, petitioner generated over 57,000 invoices bearing its trade name "Travelquest Ltd" in

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trade names "Travelquest" and "Travelquest Ltd." See 15 U.S.C. § 1064. See also TBMP § 303.

connection with its travel services. (Supplemental Declaration of Camille K. D. Miller.)

We find that there is no genuine issue that petitioner has advertised and rendered travel agency services to the public under the trade name "Travelquest Ltd" to such an extent that the public will associate that trade name with its travel services. Accordingly, we find no genuine issue as to petitioner's priority of use of "Travelquest Ltd" as a trade name.

We find unpersuasive respondent's contention that petitioner's use of its trade name, "Travelquest Ltd" in connection with providing travel agency services for the band "The Grateful Dead" is insufficient for the purpose of establishing priority in the context of a cancellation proceeding based upon likelihood of confusion. First, trade name use alone, if prior, is sufficient to bar registration and, thus, when appropriate, justify cancellation. See *Malcolm Nicol & Co. v. Witco Corp.*, 881 F.2d 1063, 1065, 11 USPQ2d 1638, 1639 (Fed. Cir. 1989); and *Alfred Elecs. v. Alford Mfg. Co.*, 333 F.2d 912, 918, 142 USPQ 168, 172 (CCPA 1964).

Second, there is nothing in the statute which requires a party to render its services to more than one client in order to establish priority. See Trademark Act

§§ 2(d) and 14. As noted above, petitioner averred that it has provided travel agency services under its trade name since 1981, and submitted evidence demonstrating that it has so rendered its services to the band "The Grateful Dead" for a substantial period of time, i.e., ten years. Third, petitioner has shown that it is an independently incorporated entity, such that the services it has rendered to the band "The Grateful Dead" must be deemed to be rendered for the benefit of another, the definition of a "service." Certainly there is nothing in the record to suggest, nor does respondent allege, that petitioner is merely an affiliate of the band.

Moreover, while "use in commerce" of a mark is necessary to obtain registration, prior use of a designation in intrastate commerce is sufficient to sustain a petition for cancellation based on likelihood of confusion. See Section 14 of the Trademark Act. See also *Corporate Document Services, Inc. v. I.C.E.D. Management, Inc.*, 48 USPQ2d 1477 (TTAB 1998); *Hess's of Allentown, Inc. v. National Bellas Hess, Inc.*, 169 USPQ 673 (TTAB 1971); and *Odom Sausage Co. v. Doscocil Sausage, Inc.*, 169 USPQ 379, (TTAB 1971).

In short, respondent cites no authority for its contention that petitioner's use of its trade name in

connection with travel services rendered to a single client is not sufficient to establish priority of use. Petitioner has demonstrated that it has made trade name use in the United States of "Travelquest Ltd" in connection with travel services rendered to the band "The Grateful Dead." Petitioner has submitted further evidence that its use of the trade name "Travelquest Ltd" is ongoing and has not been abandoned.

As noted above, petitioner has submitted uncontroverted evidence that it provides travel services under the trade name "Travelquest Ltd". In response to a motion for summary judgment, an adverse party may not rest upon mere denials of the moving party's assertions, but the response, by affidavits or as otherwise provided in the rule, must set forth specific facts showing that there is a genuine issue for trial. See Fed. R. Civ. P. 56(e). See also *Copelands' Enterprises Inc. v. CNV Inc.*, 945 F.2d 1563, 20 USPQ2d 1295 (Fed. Cir. 1991), and *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990). Thus, respondent's unsupported allegations that petitioner's trade name use is insufficient to create an association in the mind of the relevant purchasing public of

"Travelquest Ltd" with petitioner's services fails to create a genuine issue of material fact for trial.

In view of our finding as to petitioner's prior trade name use, it is not necessary for us to reach the question of whether petitioner has made prior trademark use, or use analogous to trademark use.

Turning to the question of likelihood of confusion, we find that there is no genuine issue of material fact for trial. The services identified by the mark in respondent's Registration No. 2,247,978 are "travel agency services, namely, making reservations and bookings for transportation". Petitioner has introduced evidence that it provides identical services under a trade name that is virtually identical to respondent's mark. Accordingly, respondent's unsupported assertion that petitioner has not made bona fide use of "Travelquest Ltd" as a trade name associated with travel services is not well taken. As we pointed out previously, respondent has failed to disclose any evidence that points to the existence of a genuine issue of material fact on the issue of likelihood of confusion.

In view thereof, respondent's assertions that petitioner has not submitted evidence concerning its advertising, marketing, revenues, customer identities,

budgets and customer contacts, are unpersuasive. As we stated, there is no genuine issue as to petitioner's priority, and that respondent is using a mark virtually identical to petitioner's trade name to identify identical services.

The Board notes respondent's arguments that petitioner has made insufficient responses to its discovery requests, and that respondent has filed a motion to compel further responses thereto. We further note that respondent raised numerous arguments with regard to the sufficiency of the evidence submitted by petitioner in support of its motion for summary judgment. However, respondent in no way contended that it was unable to present by affidavit facts essential to justify its opposition to the motion. In other words, respondent's papers cannot be deemed a motion for discovery under Fed. R. Civ. P. 56(f) in order to respond to the summary judgment motion. See Fed. R. Civ. P. 56(f). See also *Opryland USA Inc. v. Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992); and *Keebler Co. v. Murray Bakery Products*, 866 F.2d 1386, 9 USPQ2d 1736 (Fed. Cir. 1989). On the contrary, respondent filed a response in opposition to petitioner's motion for summary judgment and, in

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addition, filed its own cross motion for summary judgment. Thus, we find that adjudication of this matter by summary judgment is appropriate at this time.

In sum, we find that there are no genuine issues of material fact and that petitioner is entitled to judgment as a matter of law. In view thereof, petitioner's motion for summary judgment is granted, judgment is entered against respondent, and Registration No. 2,247,978 will be cancelled in due course. Respondent's cross motion for summary judgment is denied.<sup>5</sup>

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<sup>5</sup> Respondent's motion to compel is moot.